

State of California



Fair Political Practices Commission

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March 27, 1984

Lowell Smith
Mayor, City of St. Helena
1480 Main Street
St. Helena, CA 94574

Re: Advice Letter No. 84-063

Dear Mayor Smith:

This letter is in response to the questions you raised during our telephone conversation on March 15, 1984.

FACTS

Recently, the Christian Brothers Winery was closed because it is structurally unsound. A developer is considering buying the winery and converting it into a hotel. You have been offered an investment interest in this development.

QUESTIONS PRESENTED

1. Does the Political Reform Act allow you to speak to the press and to civic groups about the proposal?

CONCLUSION

If you acquire an investment interest in the development, you will not violate the Political Reform Act by speaking to the press or civic groups.

DISCUSSION

As you are aware, Government Code Section 87100^{1/} prohibits a local public official from making, participating in the making, or in any way attempting to use his official

^{1/} Hereinafter all statutory references are to the Government Code, unless otherwise indicated.,

position to influence^{2/} a governmental decision in which he knows or has reason to know that he has a financial interest. An official has a "financial interest" in a decision if it is reasonably foreseeable that the decision will have a material financial effect^{3/} on:

(a) Any business entity in which the public official has a direct ... investment worth more than one thousand dollars (\$1,000).

(b) Any real property in which the public official has a direct or indirect interest worth more than one thousand dollars (\$1,000).

(Section 87103 (a) and (b).)

If you acquire an investment interest of \$1,000 or more in the business entity developing the hotel, you may not make, participate in, or use your official position to influence, a any decision which will foreseeably have a material financial effect on the interest. (See 2 Cal. Adm. Code Sections 18700 and 18702.)^{4/} An official "uses his official position to influence a decision" if he furthers or attempts to affect in any manner any decision:

(1) Within or before his ... agency; or

^{2/} For the definitions of these phrases, see the enclosed copy of 2 Cal. Adm. Code Section 18700.

^{3/} For an explanation of the phrase "material financial effect," see the enclosed copy of 2 Cal. Adm. Code Section 18702.

^{4/} If you acquire a 10% or greater interest in the business entity developing the hotel, you will also have a pro rata ownership interest in any real property held by the entity. You will be required to disqualify yourself from decisions which will materially affect any of these real property interests. You will, of course, also be required to disqualify yourself from other decisions having a direct material financial effect on the development company.

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(2) Before any agency which is appointed by or
subject to the budgetary control of his ... agency.

(2 Cal. Adm. Code Section
18700(e).)

If you speak with the press or civic groups about the
proposed hotel development, you will not be using your official
position to influence the governmental decisions concerning the
proposed development. This phrase is not intended to prevent
such discussion with the public. I have included copies of the
Harron (A-83-184) and Thacher (A-83-226) advice letters which
discuss the types of activities which are prohibited.

If I can be of any help in the future, please feel free to
contact me at (916) 322-5901.

Very truly yours,

Janis Shank McLean
Janis Shank McLean
Counsel
Legal Division

JSM:plh
Enclosures